



## **ABANDONED PROPERTY: What to do with personal property left behind.**

A common question we get is what to do with personal property left behind by an ex-partner or housemate. We typically see this scenario when a couple lives in a home together. Even though they may have lived together for a long time, if only one person is listed on the deed, that person has sole ownership of the home. (Note: Only the deed is relevant to determining who owns the property, even when both parties are listed on the mortgage.) When the couple decides to part ways – whether because of domestic violence or other reasons – the person who does not have an ownership interest in the property moves out and often leaves behind some of their personal property. What is the homeowner legally required to do with that personal property?

*As is common with legal questions, the answer to the question is: it depends.*

*There is not one “right” answer.* One important thing to consider is that the treatment of abandoned property will only become an issue if the person who left the property behind files a claim in conciliation court (small claims court). In conciliation court, the property owner should be required to prove that they owned each individual item of personal property, the value of each item of personal property, and that they left the property at home. Then, the homeowner would assert one or more of the three options as a legal defense. The homeowner will have to assess the level of risk with each option and choose the approach that feels right for them and their situation.

### **Minnesota Statute**

Minnesota statutes provide a process for dealing with personal property that was left behind by its owner. Such personal property is considered “abandoned property” after six months has passed since the person vacated the premises. However, this new legal status of “abandoned property” does not automatically mean the homeowner becomes the legal owner of that property. After the initial six-month period, legal ownership of the “abandoned property” transfers *only if*:

- (1) Homeowner provides a 30-day written notice\* via certified mail;
- (2) Homeowner confirms that the person who left the property behind has received the written notice;  
and
- (3) The 30-day notice period has passed.

\*The 30-day written notice must state that, according to Minnesota law, the time period for abandoned property has elapsed and that ownership of the personal property will occur at the end of the 30 days. (Minn. Stat. § 345.75.)

This is a relatively low risk option because the statute lists a specific timeframe and steps for transferring ownership. However, this option requires the homeowner to wait at least six months, and that the homeowner knows the other person’s current address, which may be unworkable for some homeowners.

### **Case Law**

Over the years, Minnesota courts have determined that personal property has been abandoned when: (1) the owner leaves the property behind; and (2) the owner intends to permanently abandon the property. The second factor - the

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owner's intention to permanently abandon the property - is inferred by the owner's actions: an actual statement from the owner of their intention to abandon the property is not necessary. These factors are determined on a case-by-case basis and depend on the specific facts of each situation. While the passage of time is an important consideration, it is not the only factor the court will consider.

This option is somewhat higher risk than the statutory approach, but it is still a reasonable approach. This option may be necessary when the homeowner cannot give written notice because they do not know the other person's current address or if the homeowner needs to remove the abandoned property quickly.

### **Landlord/Tenant Law**

In many cases, when people live together, and only one owns the home, the non-owner meets the definition of "residential tenant". This may be true even when the parties did not intend to enter into a landlord/tenant relationship. Minnesota law gives landlords two options when dealing with personal property left behind after a tenant vacates the premises: (1) if the landlord chooses to store the property on the premises, the landlord must wait 28 days before disposing of, or selling, the property; or (2) if the landlord chooses to store the property off site, the landlord must wait 60 days before disposing of, or selling, the property. In either situation, if the tenant requests access to the personal property they left behind within the 28- or 60-day timeframe, the landlord must accommodate that request within 24 hours. If, after the 28- or 60-day time period has passed, the landlord sells the property, the landlord must attempt to notify the tenant of the sale at least 14 days prior to the sale, and any proceeds from the sale of the property must be paid to the tenant upon written demand. (Minn. Stat. § 504B.271.)

This approach is higher risk relative to the statutory or case law approach because the court may determine that landlord/tenant law does not apply because the parties have not entered into a landlord/tenant relationship. Still, this approach may be preferable because the timeline is significantly shorter than the other two options and written notice is not required.

### **SUMMARY**

So, what does this mean for homeowners who find themselves dealing with personal property that was left behind by its owner? Again, there is not one "right" answer. One important thing to consider is that the treatment of abandoned property will only become an issue if the person who left the property behind files a claim in conciliation court. In conciliation court, the property owner should be required to prove that they owned each individual item of personal property, the value of each item of personal property, and that they left the property at home. Then, the homeowner would assert one or more of the three options as a legal defense.

Deciding which option to rely on is up to the homeowner; the homeowner will have to assess the level of risk with each option and choose the approach that feels right for them and their situation. The clearest, safest option is to use the Minnesota statute (the first option above). However, that option requires the passage of six months, and that the homeowner knows the other person's current address. While relying on the case law for abandoned property (the second option above) is somewhat less certain than the statutory approach, it is a reliable and reasonable approach, especially when the homeowner cannot give written notice because they do not know the other person's current address. Finally, the landlord/tenant approach may be preferable because the timeline is significantly shorter than the other two options and the homeowner and written notice is not required. However, the risk to homeowner with this approach is that the court may determine that this law does not apply because the parties have not entered into a landlord/tenant relationship.

To discuss which option might be best for your situation, we recommend that you seek legal advice.

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